

**Final actions from April 1, 2004, through June 30, 2004, by the Committee on Professional Conduct. Summaries prepared by the Office of Professional Conduct. Full text documents are available on-line at <http://courts.state.ar.us/courts/cpc.html>.**

DISBARMENT:

SAM WHITFIELD, JR. of Helena, Arkansas, Bar No. 82056, was disbarred by the Supreme Court by Per Curiam Order on April 8, 2004, in No. 03-768, following his failure to respond to the Committee's petition for disbarment and failure to provide an explanation for his failure to respond to the petition.

SURRENDER of LICENSE:

BOB SAMUEL CASTLEMAN of Pocahontas, Arkansas, Bar No. 80024, surrendered his Arkansas law license, which was accepted by the Court on June 17, 2004, in No. 04-637 on the basis of his guilty plea in United States District Court on January 28, 2004, to a felony involving sending a threatening communication (a poisonous snake) through the mail.

PETER R. "Rusty" DARLING of Fayetteville, AR (formerly of Nashville, AR), Bar No. 79051, surrendered his Arkansas law license, which was accepted by the Court on June 17, 2004, in No. 04-636, on the basis of his guilty plea to a felony involving a controlled substance in Howard County Circuit Court.

BARBARA MORGAN of Little Rock, Arkansas, Bar No. 87120, surrendered her Arkansas law license, which was accepted by the Court on July 1, 2004, in No. 04-717. See Morgan, Barbara, in the Interim Suspension category (below).

RODNEY P. OWENS of Bentonville, Arkansas, Bar No. 86138, surrendered his Arkansas law license, which was accepted by the Court on May 27, 2004, in No. 04-549, on the basis of his conviction in Benton County Circuit Court of the Class D felony offense of failure to pay tax, in violation of Arkansas Code Section 26-18-202.

SUSPENSION:

RONALD DALE JONES of Benton, Arkansas, Bar No. 92132, in CPC 2003-164, had his Arkansas law license suspended for thirty (30) days and was fined \$1,000 for failure to respond to the Committee's Complaint. He was also reprimanded and ordered to pay \$2,500 restitution by Committee Order filed April 21, 2004, on a complaint by William King for violations of Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 3.2, 8.4(c) and 8.4(d). According to King, Jones represented King's corporation in a dispute with a property owner's association. Jones had previously done some legal work for King. Without King's knowledge, Jones accepted service of suit papers against the corporation and filed an answer for it in early 2001. Trial was set but King only learned of it by accident and Jones then requested a continuance. King claimed Jones only met with him for thirty minutes before trial to prepare, and the trial went against King in January 2003, resulting in an adverse judgment in excess of \$20,000. King paid Jones \$2,500 to appeal. Jones filed the record but never filed a brief, in spite of obtaining two extensions to do so. The appeal was dismissed on appellee's motion in September 2003 but Jones failed to so notify King, who later was forced to pay the judgment with his appeal bond. Jones failed to: (1) abide by his client's decision to process the appeal to conclusion, (2) act with reasonable diligence in filing a brief, (3)

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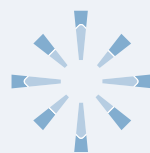
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keep his client reasonably informed on his legal matter, (4) explain the matter sufficiently to the client so the client could make timely and informed decisions, e.g. to hire other counsel to file his appellant's brief, (5) expedite his client's litigation matter, the appeal, and (6) inform his client of his failure to file a brief and the dismissal of the client's appeal. Jones' conduct, in failing to file a brief, was prejudicial to the administration of justice in that his action caused his client to lose his right to an appeal. (Jones was reinstated to good standing on May 24, 2004.)

DAVID C. MCMAHEN of Camden, Arkansas, Bar No. 78111, in CPC 2003-150, had his Arkansas law license suspended for six (6) months, was fined \$500, and ordered to pay \$400 restitution by Committee order filed June 18, 2004, on a complaint by April Bradford, for violations of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), 5.5(a), and 8.4(d). Ms. Bradford hired Mr. McMahan in November 2002 to file a Chapter 7 bankruptcy for her, and paid part of his fee and the filing costs. He assured her he would file no later than December 31, 2002. She had difficulty contacting him and getting information about her matter. She finally wrote asking for a refund of her money and a return of her documents when no filing had occurred by late March 2003. Her new attorney wrote McMahan unsuccessfully seeking her documents. When Bradford hired McMahan, his license was administratively suspended for failure to pay his 2002 annual Supreme Court license fee and it remained in that status on the date of service of the Committee complaint. McMahan responded that he had health problems for several years, had lost her information when he had a computer failure, had simply procrastinated on paying his license fee, and that Ms. Bradford had failed to return completed forms to him that he needed to go forward with her matter. He paid his fees and was reinstated December 11, 2003. The Committee found his actions were a failure to abide by the client's decisions concerning her matter, showed a lack of diligence on her matter, he failed to keep her informed, he failed to return the unearned portion of the fee and her papers, he practiced law at a time when his license was administratively suspended, and his actions caused unnecessary delay in Bradford's bankruptcy.

SHEILA ANN WHARTON of Shreveport, LA, Arkansas Bar No. 80206, in CPC 2004-090, had her Arkansas law license reciprocally suspended for three (3) years by Committee Order filed May 24, 2004, as a result of her three year suspension of her Louisiana law license entered in that state on October 17, 2003, for multiple Rules violations involving six clients, including violations involving failure to refund unearned fees and conduct involving dishonesty, fraud, deceit or misrepresentation.

RICHARD H. YOUNG of Russellville, Arkansas, Bar No. 94149, in CPC 2003-161, had his Arkansas law license suspended for three (3) months and was fined \$500 for failure to respond to the Committee's Complaint. He was also reprimanded and fined an additional \$500 by Order filed March 30, 2004, on a complaint by Brinkley District Court Judge John Martin for violations of Rules 1.3, 1.15, 3.2, 8.4(a), 8.4(c) and 8.4(d). Mr. Young failed to appear in court, was held in contempt and fined by Judge Martin, failed to respond to communications from the Court, failed to pay his contempt fine, and tried to pay his client's fine with a check drawn on his "closed" IOLTA trust account.

#### INTERIM SUSPENSION:

IVAN V. BOGACHOFF of Washington, D.C., Arkansas Bar No. 94009, in CPC 2004-055 was placed on Interim Suspension April 7, 2004, by Committee Order as a result of his guilty plea to felony bank fraud on March 5, 2004, before the United States District Court in the District of Columbia. His sentencing is set for September 15, 2004.

LUTHER VANCE MARKER of Little Rock, Arkansas Bar No. 92234, in CPC 2004-037 was placed on Interim Suspension April 6, 2004, by Committee Order as a result of his guilty plea in Pulaski Circuit Court December 2, 2003, to the Class C and D felony charges of delivery of drug paraphernalia and failure to keep records.

BARBARA MORGAN of Little Rock, Arkansas, Bar No. 87120, in CPC 2004-073 was placed on Interim Suspension May 21, 2004, by Committee Order as a result of the filing of numerous Committee Complaints questioning her handling of client matters, including accepting fees in divorce matters and not performing services or filing cases.

#### REINSTATEMENT OF LICENSE:

RONALD DALE JONES of Benton, Arkansas, Bar No. 92132, had his Arkansas law license reinstated to good standing by Committee Order filed May 24, 2004 in CPC No. 2003-164.

#### INVOLUNTARY TRANSFER TO INACTIVE STATUS:

CAROLE DIANE SEXTON of Fort Smith, Arkansas, Bar No. 92053, was involuntarily transferred to inactive status by Committee Order filed June 28, 2004, in CPC 2004-048, as a result of her alleging incapacity during a pending disciplinary proceeding. She is not entitled to practice law while in inactive status. She may be reinstated to active status upon a showing that her disability has been removed and she is fit to resume the practice of law.

#### REPRIMAND:

LARRY G. DUNKLIN of Little Rock, Arkansas, Bar No. 81051, in CPC No. 2003-085, was reprimanded and fined \$1,000 by Committee Order filed June 18, 2004, on a complaint from Michael Gans, Clerk of the United States Court of Appeals for the Eighth Circuit, for violations of Rules 1.2(a), 1.3, 3.4(c) and 8.4(d). Mr. Dunklin represented L. C. Davis in Federal court. Following his conviction, Davis filed a *pro se* notice of appeal one week later. Dunklin took no action on his client's behalf. The court issued two "show cause" orders to Dunklin in the case, each directing him to show why Davis' appeal should not be dismissed for failure to prosecute. He failed to respond to either order. On March 5, 2003, an Order was filed with the United States Court of Appeals for the Eighth Circuit suspending Dunklin from the practice of law before that Court. Dunklin was reprimanded by the United States District Court for the Eastern District of Arkansas for failing to pursue his client's desired appeal. Mr. Dunklin responded to the Committee that his failure to respond to the show cause orders was an "oversight." He stated that Davis failed to consult with him prior to filing his *pro se* notice of appeal.

J. RUSSELL GREEN of Heber Springs, Arkansas, Bar No. 73043, in CPC No. 2003-146, was reprimanded and placed on twelve (12) months probation by Consent Order filed April 19, 2004, on a complaint developed from Orders of the Supreme Court in No. CR03-487, *Johnny Dean Johnson v. State of Arkansas*, for violations of Rules 1.1, 1.2(a), 1.3, and 3.4(c). Green, a part-time public defender, filed notice of appeal for Johnson, tendered the record, and filed a motion to withdraw as Johnson's appellate counsel. The Supreme Court denied his motion, but Green thereafter failed to take further action in the appeal. The appeal was dismissed on motion of the State, to which there was no response from Green. After being served with the Committee complaint, Green filed a motion to reinstate the appeal, which was granted.

JAMES EARL HENSLEY, JR. of Cabot, Arkansas, Bar No. 99069, in CPC No. 2004-003, was reprimanded by Order filed March 30, 2004, on a complaint from Jerry Kennedy for violations of Rules 1.4(a), 1.4(b), and 1.16(d). Mr. Hensley was hired to collect a business debt of \$47,700 for his client and later to handle the client's bankruptcy. Mr. Hensley withdrew the debt suit after his client went into bankruptcy, telling the client the trustee would pursue the debt. A bank subsequently sued the client's debtor and collected some money. Mr. Hensley failed to get a reaffirmation agreement on the client's business truck and it was repossessed. The client claimed difficulty in communicating with Mr. Hensley.

GARY JAMES MITCHUSSON of Forrest City, Arkansas, Bar No. 91267, in CPC No. 2003-168, agreed to a reprimand, payment of \$24,485.04 in restitution, and a \$2,500 fine by Consent Order filed April 19, 2004, on a complaint from Eugene and Martha Caudle for violations of Rules 1.4(a), 1.4(b), 1.8(a), and 1.15(b). Mitchusson represented the Caudles, on a one-third (1/3) contingency fee, in a personal injury matter arising from a collision in 1997. The case settled in August 2001 for \$125,000. Medicare had paid medical bills, so Mitchusson set aside \$41,789.17 for possible Medicare reimbursement, paid his clients \$40,557.68, and himself a fee and costs of \$32,653.15. He presented his clients with an agreement by which he also paid them an extra \$10,000 up front in exchange for their giving him any discount he could negotiate with Medicare. The Caudles claimed they were rushed into signing this agreement, it was not fully explained to them, and they had no chance to seek other advice on the matter. The Medicare difference, which Mitchusson took, was \$24,485.00, making his total take from the matter \$57,138.19, or 45.7%, compared to the total of \$50,557.68 his clients received. Mr. Mitchusson failed to: (1) keep the balance of his clients' funds for Medicare reimbursement in his trust account, (2) to reasonably explain the matter to his clients, and (3) to promptly notify Medicare upon receipt of funds in which it had an interest. He entered into a business transaction with his clients on the Medicare discount amount without giving the clients the opportunity to seek advice of independent counsel.

LORI A. MOSBY of Little Rock, Arkansas, Bar No. 94016, in CPC No. 2003-058, was reprimanded and fined \$1,000 by Order filed June 18, 2004, on a complaint from Dr. Lance Audirsch of West Helena, for violations of Rules 1.15(b), 8.4(c), and 8.4(d). Ms. Mosby represented Mr. and Mrs. Terry Owens in a personal injury matter. They were referred by Ms. Mosby to Dr. Audirsch for treatment. Both Mr. Owens

and Ms. Mosby signed a medical lien in favor of Dr. Audirsch in mid-2000 and returned it to his office. Ms. Mosby wrote on the lien form that it applied "for bills in file only." Dr. Audirsch provided Ms. Mosby with information related to his treatment and billing on Mr. Owens. In July 2002, Dr. Audirsch's office was notified the claim had settled and that Mr. Owens was responsible for paying his bill. Dr. Audirsch made numerous efforts to contact Ms. Mosby about the lien. He sent her copies of the lien at her request. Ms. Mosby responded to the complaint that she settled Owens' claim after not having spoken with him for a year. She thought Dr. Audirsch was paid by Owens' PIP coverage. She claimed she was in mourning for her father at the time in 2002 when Dr. Audirsch contacted her about the Owens account. The Committee found she failed to promptly deliver to Dr. Audirsch settlement funds he was entitled to receive. Her failure to deliver funds to Dr. Audirsch was conduct that was dishonest, deceitful, fraudulent, and misrepresentation.

RALPH MYERS, III, of McCrory, Arkansas, Bar No. 84112, in CPC No. 2002-051, was reprimanded, fined \$5,000, and ordered to pay Committee costs of \$548.14 by Consent Order filed April 19, 2004, on a complaint from Peter Fore for violations of Rules 1.4(b) and 1.8(a). Fore had a dispute with a bank over an \$8,000 auto loan and a "freeze" put on his account by the bank. He claims he went to Myers as a lawyer, and that Myers had never previously represented Fore. Myers claims Fore came to him to request a personal loan from Myers. Fore signed a document Myers prepared, which Fore claimed he understood was a mortgage, by which Fore obtained a refinancing loan from Myers, receiving \$17,405.46, and that Myers got \$5,000. The agreement provided for Myers to purchase Fore's home for \$30,000 and set out conditions under which Fore could repurchase the home. Fore was to make the monthly payments to the bank on the loan. In December 2001 Fore entered into an agreement to sell his home for \$65,000 to a third

party. When a release of the Myers "mortgage" was sought, Myers claimed ownership of Fore's house through the document that was titled Warranty Deed and signed by Fore. Civil litigation was pending between Fore and Myers arising out of the same home deal, at the time of the Committee complaint. That litigation was settled, with Mr. Myers purchasing Fore's home for \$70,000, and Fore receiving \$41,632.75. The nature of Myers' role in the Fore matter was strongly disputed by both parties in the Committee proceeding. Mr. Myers agreed that he had failed to adequately explain the matter to Fore, and that he entered into a business arrangement with Fore, who claimed he was Myers' client, without providing him the opportunity to seek independent counsel.

PAUL E. REVELS of DeQueen, Arkansas, Bar No. 83239, in CPC No. 2003-179, was reprimanded and fined \$2,500 by Order filed April 6, 2004, on a complaint from the Committee staff for violations of Rules 1.15(a) and 8.4(c). Mr. Revels represented a client in a personal injury matter, received the settlement funds, withheld about \$23,000 to pay the client's medical bills, and then allowed his trust account balance to fall below the minimum required level to maintain this client's settlement funds balance on several occasions. Trust account funds were used to pay personal items, and commingling of client and personal funds occurred in his IOLTA trust account. On two occasions his overall trust account balance was negative. He was found to have converted from the trust account funds which were owed either to medical providers for his client or to the client. The Office of Professional Conduct has filed a notice of appeal from this sanction decision, claiming the findings are of "serious misconduct" and the Procedures require a sanction of at least a suspension for conversion of funds.

JEFFREY C. ROGERS of El Dorado, Arkansas, Bar No. 83150, in CPC No. 2004-002, was reprimanded, fined \$500, and ordered to pay \$1,000.00 restitution by Committee Order filed May 4, 2004, on a complaint from Harold and Faye Scott for violations of Rules 1.2(a), 1.3, 1.4(a), 1.16(d), 8.4(c) and 8.4(d). The Scotts hired Rogers to represent them in a real estate transaction where their grantor, Bell, was alleged to not be competent. After attempts to communicate with the grantor, Rogers was instructed to file suit, which he failed to do. The grantor then sued the Scotts. Pre-trial, the Scotts had difficulty contacting Rogers and he failed to take various actions in their suit that they requested of him. Rogers disputed these contentions. After a three day bench trial, the judge requested briefs from the parties. Rogers had not filed his brief on the due date. The Scotts went to his office, waited until he completed their brief, and then took it to the post office and mailed it themselves. The



Scotts told Rogers to appeal, paid him a fee of \$1,700 for the appeal, and a transcript was prepared at a cost of \$1,200 to the Scotts. Rogers obtained an order for an extension of time to lodge the appeal. The Court of Appeals then granted the appellee's motion to dismiss the appeal. The Scotts went to Little Rock and examined the Clerk's file there, discovering that Rogers never filed an appellant's brief. Rogers responded that he could not complete the brief due to his workload. He failed to file a response to the motion to dismiss the appeal. He claimed he told the Scotts there was little merit to their appeal and they should abandon it. They dispute he told them such. Rogers had been employed and paid by the Scotts on two other matters for their son, which they claimed he failed to pursue. He admitted he had taken no action in one matter and was awaiting their son's instructions in the other matter.

JIM ROSE, III, of Fayetteville, Arkansas, Bar No. 79247, in CPC No. 2003-036, was reprimanded and fined \$2,500 by Consent Order filed June 4, 2004, on a complaint from Dr. Richard Back for violations of Rules 1.1 and 3.4(c). In 1997 Dr. R. Back hired Rose to prepare a contract to be signed by Dr. B. Back, his spouse, over a business dispute between the Backs. The document was termed a "post-nuptial" agreement and Dr. B. Back signed it. According to Mr. Rose, one of the purposes of the document was to insure the Backs' marriage stayed intact. In 1998 she sued him for divorce. Dr. R. Back hired Rose, and declined a settlement offer on his belief that the post-nuptial agreement was valid. The trial judge found the agreement unenforceable for lack of consideration. Dr. R. Back hired an attorney to sue Rose for legal malpractice in 2000. During his deposition, Rose stated that he had told his client the agreement was not enforceable. Dr. Back had taped conversations with Rose in which Rose stated the agreement was enforceable. Rose acknowledged the discrepancy, stating that as the divorce trial approached, and since his client spurned the settlement, he was merely taking a positive attitude toward the post-nuptial agreement for trial. The legal malpractice case was settled and that agreement was sealed. The Committee found Mr. Rose failed to provide competent representation to Dr. Back regarding the post-nuptial agreement, and that he did not give truthful testimony in a deposition in a court proceeding.

FRANK E. SHAW of Conway, Arkansas, Bar No. 79255, in CPC No. 2003-099, was reprimanded and ordered to pay \$825 restitution by Consent Order filed April 19, 2004, on a complaint from Jeremiah Holland for violations of Rules 1.2(a), 1.3, 1.4(a), 1.4(b), 1.16(d) and 3.2. Shaw was retained to represent Holland, barely eighteen at the time, in a murder trial in 1993, receiving \$8,825 in Holland's funds, of which

\$8,000 was for the legal fee. Holland was convicted and is serving a life sentence. Shaw filed a notice of appeal and ordered the transcript, paying \$500 on the transcript fee. The record and transcript were never filed. Holland's inquiry years later revealed his direct appeal had not been filed. Holland's interlocutory appeal, by another lawyer, of a jurisdictional issue was being processed at about the same time as his trial, and was unsuccessful. Holland claimed he only knew that he had lost an appeal. Shaw failed to abide by his client's request for a direct appeal, failed to adequately communicate with his client, failed to account to the client for the balance of the client's funds he held, and failed to take reasonable efforts to expedite his client's litigation.

ANNE ORSI SMITH of Little Rock, Arkansas, Bar No. 88163, in CPC No. 2004-006, was reprimanded by Committee Order filed May 4, 2004, on a complaint from Circuit Judge Joyce W. Warren of Pulaski County for violations of Rules 1.1, 1.3, 3.4(c) and 8.4(d). She was also reprimanded and fined \$1,000 for failure to respond to the Committee's Complaint. Judge Warren appointed Ms. Smith to represent Ms. Whittamore on an appeal from an order terminating Whittamore's parental rights. The record was not timely lodged. Ms. Whittamore told Judge Warren she was told by Ms. Smith that Smith was going to dismiss her appeal. By her default, Smith was found to have failed to provide her client competent representation, to act diligently, to obey an obligation of the court, and to have engaged in conduct that was prejudicial to the administration of justice.

#### CAUTION:

GREGORY E. BRYANT of Little Rock, Arkansas, Bar No. 82024, in CPC No. 2004-033, was cautioned and fined \$500 by Consent Order filed May 24, 2004, on a referral from the Arkansas Supreme Court in an appeal involving Mary Hiang and Consuella Terrell, for violations of Rules 1.3 and 8.4(d). Bryant failed to obtain an order extending the time for lodging the record on appeal, and had to file a motion for rule on the clerk, after he tendered the record two weeks late. The motion was granted and his clients' appeal was allowed.

S. GENE CAULEY of Little Rock, Arkansas, Bar No. 94012, in CPC No. 2003-157, was cautioned and fined \$1,000 by Order filed June 3, 2004, on a complaint from Jay Garrett of the Kentucky Bar Association attorney discipline office for violations of Rules 7.3(b) and 7.3(d). Cauley's firm sent an unsolicited e-mail to a Kentucky business advertising that it represented investors and consumers in class action and corporate government litigation. The main focus of the e-mail was a firm named Cryolife, with which the Kentucky recipient had no connection. The

Kentucky Office of Bar Counsel determined the e-mail was the unauthorized practice of law there and targeted spam solicitation and referred the matter to Arkansas. Cauley denied the charges, stating the e-mail was a notice required to be given by class lead plaintiff concerning the pendency of a class action suit. He stated the information in the e-mail was merely biographical and not solicitation. The Committee found the e-mail was a solicitation that (1) did not contain the required special notice about the office where any complaints about the solicitation or the lawyer could be sent, and (2) violated the rule that required such solicitations to disclose how the sender obtained the recipient's name, which disclosed information in Cauley's e-mail misrepresented to the recipient the source of the information.

TONA M. DEMERS of Pensacola Beach, FL, (formerly of Little Rock), Arkansas Bar No. 91024, in CPC No. 2003-120, was cautioned by Consent Order filed April 19, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 3.4(c) and 8.4(d) arising out of her representation of Mervin Jenkins in No. CR01-081. Ms. DeMers was twice ordered by the Court to submit a proper abstract with her appellant's brief and failed to do so, requiring the State to finally have to submit a substantial supplemental abstract. Her actions caused the Court to have to expend additional and unnecessary time dealing with the case, conduct prejudicial to the administration of justice.

LISA M. DENNIS of Fayetteville, Arkansas, Bar No. 92169, in CPC No. 2004-008, was cautioned by Consent Order filed April 2, 2004, for violations of Rules 1.3 and 8.4(d), on a self referral from Ms. Dennis arising out of her representation of Angela Doss in an appeal, No. 03 1074, from a trial court decision terminating Ms. Doss' parental rights. Ms. Dennis obtained an order for extension of time to file the appeal record, but she did not file the order until the 91st day, one day late. Her motion for rule on the clerk was denied and her client lost her right to appeal.

RON L. GOODMAN of Little Rock, Arkansas, Bar No. 86070, in CPC No. 2003-195, was cautioned and ordered to pay \$1,200 restitution by Consent Order filed April 19, 2004, on a complaint from Sheila Henley for a violation of Rules 1.5(c). Mr. Goodman had previously represented Ms. Henley in a bankruptcy when she hired him to represent her in a child custody and support matter in May 2003, where she sought recovery of \$8,000 in unpaid support. She paid him a retainer of \$1,000 but stated there was no discussion of any hourly rate fee for the matter. Goodman told her he would work the support matter on a contingency but never reduced the agreement, or any percentage amount, to writing. The court ordered payment of the \$8,000 arrear-

age at \$88 per week. Hensley states she asked Goodman how his fee would be paid with the \$88 weekly payments and she was told not to worry about it. She later received a bill for \$2,000. She eventually received bills totaling \$3,800 for the matter, consisting of the \$2,000 retainer, hourly charges of \$1,700, and a "late fee" of \$100. Goodman was found to have failed to reduce a contingency fee arrangement to writing, as required by Rule 1.5.

ANN HILL of Hot Springs, Arkansas, Bar No. 93164, in CPC No. 2003-200, was cautioned by Consent Order filed April 19, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3 and 8.4(d). Ms. Hill represented Timothy Anderson in No. CR03-1286, an appeal from Garland County. She obtained a proper order for an extension of time to lodge the record on appeal but then filed the record one day late. Her motion for rule on the clerk was granted, and the appeal was accepted for filing.

WILLIAM M. HOWARD, JR. of Pine Bluff, Arkansas, Bar No. 87087, in CPC No. 2004 026, was cautioned and fined \$250 by Consent Order filed June 18, 2004, on a referral by the Arkansas Supreme Court for violations of Rules 1.3, 3.4(c), and 8.4(d). Emmitt Jones requested that his attorney, Mr. Howard, appeal a denial of Jones' Rule 37 petition. Jones filed a *pro se* notice of appeal but Howard filed nothing. Jones then filed a *pro se* motion for belated appeal, requesting that Mr. Howard appeal the case. The Supreme Court granted the motion and directed Howard to file a brief. The brief was tendered one week late, with a motion to file belated brief and supplemental record. The motion was treated as one for rule on the clerk and it was granted when Mr. Howard accepted responsibility for the late filing. Mr. Howard agreed that he failed to act diligently, disobeyed an obligation to a court, and caused delay in the administration of justice.

RICHARD LANE HUGHES of Little Rock, Arkansas, Bar No. 83239, in CPC No. 2003 156, was cautioned by Committee Order filed April 7, 2004, on a complaint from Robert S. Murphy, for violations of Rules 1.4(a) and 3.2. Murphy hired Hughes to represent him in a divorce. Murphy had communication problems with Hughes and Hughes missed two court hearings on the divorce. Murphy got another lawyer to take over his case. Hughes responded that he had health problems during this time and that his actions did not prejudice the client's case.

JEAN M. MADDEN of Little Rock, Arkansas, Bar No. 84096, in CPC 2004-023, was cautioned by Committee Order filed June 29, 2004, on a complaint by Lori A. Mosby, for a violation of Rule 7.3(b)(6). Ms. Madden failed to include on her solicitation letter to prospective clients the required language, "ANY COMPLAINTS

ABOUT THIS LETTER OR THE REPRESENTATION OF ANY LAWYER MAY BE DIRECTED TO THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT, C/O CLERK, ARKANSAS SUPREME COURT, 625 MARSHALL STREET, LITTLE ROCK, AR 72201."

JACK R. KEARNEY of Little Rock, Arkansas, Bar No. 77194, in CPC No. 2003-184, was cautioned by Order filed March 30, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3, and 8.4(d) in his representation of Billy Welch on appeal in No. CR 2003 539. Mr. Kearney tendered the record on his client's Rule 37 appeal untimely. His second motion for rule on the clerk was granted and his client's appeal allowed.

JOHN WILLIAM SETTLE of Fort Smith, Arkansas, Bar No. 73122, in CPC No. 2003-169, was cautioned by Order filed May 4, 2004, on a complaint from Marilyn Taylor for violations of Rules 1.4(a) and 1.4(b). Taylor hired Settle to defend her in a suit filed by her former landlord. After a hearing, judgment was entered against Taylor for \$1,991.42. Taylor claimed Settle did not tell her about the judgment and she first learned of it when she was garnished. She claimed she would have appealed if she had known in time to do so. Settle stated he thought he had notified Taylor, but he could not find any document showing he had notified Taylor of the judgment. He was found to have failed to keep his client informed of her matter and to explain it to the extent necessary for her to make informed decisions.

FRANK E. SHAW of Conway, Arkansas, Bar No. 79255, in CPC No. 2003-180, was cautioned and fined \$1,000 by Order filed March 31, 2004, on a referral from the Arkansas Supreme Court for violations of Rules 1.3 and 8.4(d) in his representation of James Rickey Mauldin on appeal in No. CR 2003-1197. Mr. Shaw failed to timely file the record on appeal, his motion for rule on the clerk was granted, and his client's appeal allowed.

RAYMOND T. "R.T." STARKEN of Cherokee Village, Arkansas, Bar No. 99003, in CPC No. 2004-010, was cautioned and fined \$500 by Committee Order filed May 4, 2004, on a complaint from Sharon Knight for violations of Rules 5.1(a), 5.1(c)(1), 5.1(c)(2), 5.5(b), 7.1(a), 8.4(a), and 8.4(c). Mr. Starken is married to Karen Starken, whose Arkansas law license was suspended in 1989 and remained so at the time of these events. After a favorable 7-4 vote on May 29, 2003, by the Arkansas Board of Law Examiners, her application for readmission was pending before the Arkansas Supreme Court when the telephone book display ad for Mr. Starken's law office came due for renewal in

September 2003. He renewed the ad and had his wife added to the attorneys practicing there, even though she was not admitted in Arkansas at the time. By Order issued October 23, 2003, the Supreme Court unanimously denied Ms. Starken's readmission in Arkansas. Mr. Starken was found to have violated Rules related to misleading attorney advertising, deceit and misrepresentation, and holding out one not authorized to practice law in Arkansas as being associated with his law office.

ROY EDWARD THOMAS of Batesville, Arkansas, Bar No. 73122, in CPC No. 2004-025, was cautioned and fined \$500 by Consent Order filed April 27, 2004, on a complaint before the Committee for violations of Rules 1.15(a) and 8.4(a). Knowing he was required to have one, and having had an IOLTA trust account previously, Edwards had no IOLTA trust account from July 1997 to September 2001, and handled funds on at least two occasions during the period which were required to be placed in a trust account.

MARK E. VALESQUEZ of Fayetteville, Arkansas, Bar No. 98149, in CPC No. 2003-172, was cautioned by Consent Order filed April 19, 2004, on a complaint from Cristobal A. Mancía for violations of Rules 1.1, 1.3, 1.4(b), and 3.4(c). Valesquez represented Ms. Valles-Montes before the Immigration Court, using Mr. Mancía as the main contact. He told Mancía that Valles-Montes would not have to attend a hearing because it would be conducted telephonically. Valesquez failed to file a proper entry of appearance document with the Immigration Court and he was not considered as counsel for Valles-Montes. She received a notice of hearing in December 2002 which she delivered to Valesquez. He sought a change of venue from Memphis twice, both being denied. Ms. Valles-Montes then prepared for what they thought would be a telephonic hearing with Mr. Valesquez from his office. The day before the hearing she learned it would be conducted in San Antonio, Texas, and Valles-Montes had to attend. She was unable to attend and was later arrested for this failure. Valles-Montes later learned Valesquez had submitted incorrect forms twice and the Texas court had returned them. She hired new counsel who successfully pursued a motion to reopen based on ineffective assistance of counsel by Valesquez. Mr. Valesquez returned to Ms. Valles-Montes \$750 of the fee she had paid him. Valesquez was found to have failed to: (1) properly prepare crucial forms for his client, (2) act with reasonable diligence, (3) adequately explain the matter to the client, (4) and failed to follow court requirements by not submitting a proper entry of appearance, causing same to be not considered by the court.

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# Arkansas Bar Foundation Memorials and Honorariums

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*The Arkansas Bar Foundation acknowledges with grateful appreciation the receipt of the following memorial, honorarium and scholarship contributions received during the period March 18, 2004 through July 2, 2004:*

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## **SCHOLARSHIPS**

Wilson & Associates, PLLC

DONALD E. WARREN of Pine Bluff, Arkansas, Bar No. 99007, in CPC No. 2004-011, was cautioned and fined \$1,000 by Consent Order filed April 19, 2004, on a complaint from Circuit Judge Barry Sims of Pulaski County for violations of Rules 1.1, 1.2(a), 1.3, 3.2, 3.4(c), and 8.4(d). Warren represented Steven Mark Curtis in Pulaski Circuit Court and filed an appeal in June 2003 following his client's conviction. Judge Sims set three status hearings for Curtis and Warren failed to appear at all three. Warren failed to pick up the appeal transcript. At the last status hearing, another attorney appeared and advised the trial court that there was no appeal. Warren failed to: (1) perfect his client's criminal appeal, (2) abide by the client's decisions concerning the objective of the representation, an appeal, (3) act with reasonable diligence in his client's matter, (4) make reasonable efforts to expedite his client's litigation, the appeal, and (5) comply with the Court rule on timely filing appeal records and to appear for three court-ordered status hearings. His conduct was prejudicial to the administration of justice because it required the circuit court to expend additional time on the matter which would not have been needed if he had appeared as ordered.

B. DALE WEST of Monticello, Arkansas, Bar No. 89192, in CPC No. 2003-187, was cautioned and fined \$100 by Consent Order filed April 23, 2004, on a complaint before the Committee for violations of Rules 1.3 and 8.4(d). Mr. West represented Kenyon L. Glenn in an appeal, No. CACR03-903. West failed to obtain an extension of time to file his brief, failed to file a brief, and failed to respond to the State's motion to dismiss the appeal, which was granted. His motion to reinstate the appeal, which was granted, was only filed after he was served with the Committee's complaint. He was found to have failed to act diligently and to have engaged in conduct prejudicial to the administration of justice regarding this appeal.

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